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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Implementation of Section 309(j)  
of the Communications Act  
Competitive Bidding

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PP Docket No. 93-253

To: The Commission

**REPLY COMMENTS OF GTE SERVICE CORPORATION**

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## **EXECUTIVE SUMMARY**

In its competitive bidding rulemaking, the Commission is establishing the future framework for the licensing of radio spectrum. The very first application of the new auction rules will involve critically important allocations for new Personal Communications Services. For these reasons, the Commission has received an enormous outpouring of comments from every segment of the wireless telecommunications industry.

Despite the diverse perspectives reflected in the rulemaking comments, there is a remarkable consistency in the basic principles that should govern the competitive bidding processes. A commonly held tenet is that auction rules should ensure open and informed participation in the bidding for spectrum. In particular, the record reflects strong support for a level playing field that allows all potential bidders to pursue desired spectrum and service areas without the complicating and preemptive effects of national combinatorial bids.

After reviewing the various proposals for implementing open and informed bidding procedures, GTE believes that the Commission should pursue a refined approach that auctions all of the individual service areas for similarly sized spectrum blocks at the same time. An iterative bidding process should be employed whereby the highest incoming bids for each service area would be continuously posted and increased bids entertained until some reasonable period of bidding inactivity passes.

The auction system proposed by GTE would have the advantages of allowing bidders to know what valuations are being assigned to markets across the country and to better implement strategies for acquiring licenses critical to their business plans. This method would eliminate any plausible need for national combinatorial bidding as proposed in the Notice given the ability of participants to outbid others for any or all

service areas. Indeed, electronic bidding along the lines suggested by the National Telecommunications and Information Administration ("NTIA") could be employed assuming its timely and reliable availability.

In order to avoid speculation and warehousing in new spectrum, GTE joins numerous other parties in urging the adoption of: (1) requirements for significant upfront deposits based upon cents per population per MHz; (2) strict construction and performance deadlines for auctioned services; and (3) payments in full by winning bidders within a reasonable timeframe. However, GTE must take strong exception to the self-serving arguments of MCI that cellular carriers should face special barriers to entering the bidding process. If anything, the Commission should reexamine whether the PCS eligibility rules are drawn too narrowly given the realities of wireline and non-wireline settlements in the cellular industry.

With respect to designated entity preferences, the Commission should take great care to define small businesses, rural telephone companies and minority or female owned businesses to ensure consistency with Congressional objectives. Moreover, the preferences ultimately awarded should be designed to afford opportunities for designated entities to participate in PCS without unduly prejudicing or complicating the overall auction process.

Finally, there is nearly unanimous agreement among all commenting parties that the Commission cannot and should not extend competitive bidding to license renewals or modifications. Similarly, there is widespread concurrence that the Commission should not impose competitive bidding procedures on intermediate links or BETRs spectrum used for local exchange telephone service. On the other hand, for-profit services to subscribers pursued through SMR spectrum or unserved cellular service areas should be subject to auctions. The record clearly confirms the importance of adopting competitive bidding rules consistent with these principles.

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To: The Commission

**REPLY COMMENTS OF GTE**

GTE Service Corporation ("GTE") on behalf of its domestic telephone, equipment and service companies hereby submits its reply comments in the above-captioned proceeding concerning competitive bidding rules. As detailed below, the record before the Commission shows broad based support for auction processes that permit open and informed participation by qualified bidders. Consistent with these principles, GTE believes that auctions can be effectively structured to entertain open bids that allow informed business decisions by prospective bidders while eliminating any plausible basis for ill-advised national combinatorial bidding proposals.

**I. THE COMMENTS PROVIDE STRONG SUPPORT FOR OPEN BIDDING PROCESSES THAT ENSURE INFORMED PARTICIPATION BY QUALIFIED APPLICANTS**

**A. A Preponderance Of The Commenting Parties Join GTE In Favoring Open And Informed Bidding Procedures**

The Notice focused public comment on two principal and divergent auction systems. As its generally preferred method, the Commission tentatively selected oral, sequential bidding. As an alternative for homogeneous spectrum licenses, the Notice

cited the potential suitability of simultaneous sealed bids.<sup>1</sup> For broadband 2 GHz PCS, a hybrid approach was proposed that combines open, oral bidding for individual service areas with sealed national combinatorial bids.

With a few exceptions, the opening comments strongly support oral bidding over sealed bidding. Similarly, there is broad agreement that sequential bidding moving from largest to smallest spectrum blocks would be appropriate. In contrast, only a few parties endorse use of combinatorial bidding.

After reviewing the totality of the opening comments, GTE recommends a variation of open bidding that would conduct iterative auctioning for all similarly sized PCS spectrum blocks. This would allow more perfect information concerning values being assigned to spectrum and allow bidders to consider value interdependencies in pursuing multiple service areas under their business plans. This form of iterative bidding would also allow assemblage of regional or national systems without the negative effects of the national combinatorial bidding proposed in the Notice. In addition, GTE's proposal would be compatible with electronic bidding as described by NTIA,<sup>2</sup> assuming that a reliable system could be implemented in a timely fashion.

**1. Open bidding ensures informed participation and the issuance of licenses based upon economic value**

In its opening comments, GTE supported the Commission's tentative proposal to employ oral bidding as the basic auction method.<sup>3</sup> There is widespread agreement among commenters that the oral bidding process "is by far the most desirable."<sup>4</sup> Oral bidding allows participants to obtain "as much information about the process as

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<sup>1</sup> Notice at ¶ 48.

<sup>2</sup> NTIA at 16.

<sup>3</sup> GTE Comments at 5-6.

<sup>4</sup> National Association of Black Owned Broadcasters, Inc. at 6 ("NABOB").

possible so that bidders can change their strategies and objectives as the realities of the bidding process unfold.”<sup>5</sup> As Southwestern Bell notes, “increases in information raise the level of competition within an auction . . . ensur[ing] that the resulting price more closely approximates the value of the spectrum.”<sup>6</sup>

Oral bidding “allows the bidder to watch the behavior of other participants and draw appropriate conclusions which resolve some of the objective valuation uncertainty before the final price is established.”<sup>7</sup> This eliminates unnecessary transaction costs<sup>8</sup> and provides a fair and equitable playing field. Thus, as the comments demonstrate, open bidding results in licenses being awarded to those valuing them most highly, the possibility of bidder’s “regret” is eliminated and the price-suppressive effect of the “winner’s curse” is mitigated.<sup>9</sup>

**2. Auctions moving from largest to smallest spectrum allocations is cited by numerous parties as contributing to sound, sensible bidding decisions**

GTE was among many parties commenting that licenses should be auctioned in descending order from largest to smallest spectrum allocation.<sup>10</sup> This “key procedural decision . . . will permit PCS markets to emerge rationally and efficiently.”<sup>11</sup>

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<sup>5</sup> Id.

<sup>6</sup> Southwestern Bell Corporation at 18-19.

<sup>7</sup> Telephone and Data Systems, Inc. at 7 (“TDS”).

<sup>8</sup> Paging Network, Inc. at 10 (“PageNet”).

<sup>9</sup> Id.

<sup>10</sup> See, e.g., Alliance for Rural Area Telephone and Cellular Service Providers at 12-13; Alliance Telecom, Inc. at 3; American Personal Communications at 5 (“APC”); Association of Independent Designated Entities at 16; Calcell Wireless, Inc. at 14; Comcast Corporation at 10; PageMart, Inc. at 20-23; PageNet at 17-18; Small Business PCS Association at 5; Telemarc Group at 3; Telocator at 4; Unique Communications Concepts at 7; and the Richard L. Vega Group at 4.

<sup>11</sup> APC at 5.



Participants will be able to adjust their "aggregation strategies if one or more bids for multi-market areas fail to succeed."<sup>12</sup> This approach also allows better financial resource management by licensees, as the most expensive purchase decisions will occur first.

**3. GTE recommends iterative auctioning of similarly sized spectrum blocks as an improved form of open and informed bidding**

After reviewing the many proposals before the Commission, GTE believes that a more refined approach to open bidding is possible. First, GTE suggests that licenses for a given spectrum block could be auctioned in one bidding session. For example, in the PCS context, the Commission could start with all the MTAs in the 30 MHz blocks, followed by the BTAs in the 20 MHz blocks and continuing to the BTAs in the 10 MHz blocks. Second, the bidding process must track traditional oral bidding by clearly identifying the bidders, the bid price and the MTA or BTA on which participants are bidding. Third, GTE believes that bidding should remain open until some reasonable predetermined duration of inactivity passes that allows sufficient time for evaluating and responding to bidding activity for each MTA or BTA. Finally, minimum bid increments should be set.

GTE believes this bidding system has several important advantages. The participants can instantaneously compare current bid levels with their own valuation information to assess whether or not to increase their bids. In addition, the participants have the ability to place bids reflecting the interdependencies in value that exist among some PCS licenses. And the participants can also assemble regional or national systems without the drawbacks of combinatorial bidding discussed in Section I.C. below.

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<sup>12</sup> Telocator at 4.

GTE also notes NTIA's proposal for an electronic bidding system. As NTIA states, an electronic iterative auction would effectively allow bidders to

continuously receive information about the preferences of other bidders and . . . to respond in their own bidding. Conducting such an auction electronically — that is, using a computer and terminals — would merely facilitate the provision of information about current bids to all participants.<sup>13</sup>

GTE's proposal could be implemented through an electronic bidding system assuming its reliability and timely availability.

Finally, GTE believes that its proposed iterative bidding approach ultimately permits more rapid licensing of spectrum with fewer burdens for the Commission. It avoids the complications, delays and controversies associated with mixing open and sealed bids or superimposing national combinatorial bids upon individual service area auctions. Through this improved form of open bidding, the Commission can permit bidders pursuing both individual, regional and national spectrum to compete on an informed and level playing field.

#### **4. An open process calls for public disclosure of qualified bidders' ownership**

As discussed above, GTE and a large majority of commenters support auction rules that ensure open and informed participation in the bidding for spectrum. It goes without saying that an open process demands that all relevant information be made public. For these reasons, GTE believes that the identity of a bidder's ownership should be publicly disclosed in advance of the auction. Such information is necessary if competing bidders are to accurately assess the legitimacy of their auction opponents and their respective bids.

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<sup>13</sup> NTIA at 16.

**B. Significant Upfront Deposits And Prompt Payment In Full By Winning Bidders Will Alleviate Speculation And Warehousing Concerns**

The Notice tentatively proposed to require each auction participant to tender in advance to the Commission a substantial sum or upfront payment as a condition of entry. These deposits will serve "[t]o ensure that only serious, qualified bidders participate" and "to minimize the probability that, after the auction is over and the participants have dispersed, the Commission finds that it cannot award a license to the auction winner."<sup>14</sup> GTE and a substantial number of other commenters agree with this approach.<sup>15</sup>

A significant fee is a reasonable tool to discourage those bidders whose bona fide interest in providing service to the public is questionable. In this regard, an upfront payment based upon cents per pop per MHz has conceptual support from many quarters. It requires all participants to put effort into capital formation commensurate with the value of the license being sought, before the auction begins.

With the large number of potential bidding opportunities and choices, the upfront payment requirements should be refined to recognize and accommodate the needs of participants contemplating a multiplicity of bids. For these bidders, the number of bids might change over the course of the auction so that advance calculations of the amount of the necessary upfront payment would be difficult. Accordingly, GTE supports the suggestion of AT&T that such multi-market bidders should be permitted to establish an

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<sup>14</sup> Notice at ¶ 102.

<sup>15</sup> American Wireless Communications at 31-32; AT&T at 33-35; BellSouth at 40-43; Cellular Service at 15-16; CTIA at 30; The Chase McNulty Group at 2; Cook Inlet Region at 46-47; Corporate Technology Partners at 8; Liberty Cellular at 6; McCaw Cellular at 17-18; MCI at 13; Nextel at 16; Pacific Bell and Nevada Bell at 28-29; PageNet at 35-36; Ray Communications, Inc. at 1; Rochester Telephone at 13; Southwestern Bell at 38-40; Telepoint at 2; Wireless Services at 3.

interest bearing account that can be replenished during the course of the auction process where necessary.<sup>16</sup>

In addition, GTE and other commenters concur with the Notice's proposal to require payment in full by the winning bidder, within a reasonable period of time after the close of the auction. Lump sum payments appropriately place the burden of financing on the private sector, relieving the Commission of creditworthiness decisions. Further, lump sum payments remove the risk of default from the FCC and alleviate speculation and warehousing concerns. Thus, there is ample support for requiring payment in full within an appropriate timeframe from determining the formal winning bid.

**C. The Comments Of Numerous Parties Underscore The Fact That National Combinatorial Bidding, As Proposed In The Notice, Would Be Inconsistent With The Commission's Competitive Bidding Goals And The Public Interest**

Many parties commenting in this proceeding criticize national combinatorial bidding as an inappropriate model for PCS licensing.<sup>17</sup> The disadvantages of national combinatorial bidding have been well documented in the record — such a system would add significant complexity to the bidding process and create barriers to entry. The resulting controversies and limitations on entry opportunities would be inconsistent with the objectives of the Budget Act and the Commission's stated goals in this rulemaking.

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<sup>16</sup> AT&T at 33 n. 40. See also Liberty Cellular at 6; Pacific Telecom Cellular at 6.

<sup>17</sup> Baraff, Koerner, Olender & Hochberg at 1-2; BellSouth at 6-11, Quentin L. Breen at 2-3; Comcast at 4-9; Dial Page at 2-3; Geotek at 11; McCaw at 7-14; NABOB at 5; Pacific Bell at 5-10; PacTel at 4; PageNet at 18-22; Rural Cellular Association at 9; Rural Telephone Company at 2; Southwestern Bell at 22-28; Sprint at 5-7; TDS at 11-15; Telocator at 4-7; U.S. Intelco at 12.

First, the proposed national combinatorial bidding scheme undermines the Commission's goal of establishing an administratively simple, streamlined auction process. The hybrid use of both open and sealed systems for local and national service areas will introduce substantial complexity, confusion and delays into the process.

Second, as some commenters suggest, national combinatorial bidding defeats the purpose of adopting an open sequential process. "[T]he Commission's combinatorial proposal turns the strengths of the oral bidding format into weaknesses,"<sup>18</sup> as it deprives the highest oral bidder of information regarding competing sealed bids, and increases the likelihood that the license is not awarded to the person attaching the highest economic value to the spectrum for the specific service area. Moreover, national combinatorial bidding undermines the fairness of the open, oral system as winning bidders for MTAs or BTAs ultimately may lose their tentative licenses to a higher combinatorial bid even though they have tendered substantial upfront payments and relied on award of the license when making other bidding decisions.

Third, national combinatorial bidding is likely to delay service to less populated and rural areas. Small low population density markets are likely to be warehoused by national licensees while they concentrate their resources on developing service in the larger, more profitable markets.<sup>19</sup> As a result, the award of national licenses through combinatorial bidding would disadvantage the residents of small market areas.<sup>20</sup>

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<sup>18</sup> PageNet at 20.

<sup>19</sup> See AT&T at 5; Quentin L. Breen at 2.

<sup>20</sup> The small rural markets acquired through the iterative bidding process proposed by GTE infra would reflect an intensity of interest in such areas by the winning bidders, as parties would actively bid on only those licenses critical to their business plan.

Fourth, without changes in the Commission's PCS rules, national combinatorial bidding would unfairly preclude cellular participation. In broadband PCS, for example, restrictions are imposed on the license blocks that cellular licensees may bid on in their service areas. Thus,

[i]f combinatorial bidding is used, these carriers will be at risk of losing MTA licenses for which they were both eligible and the highest bidder — if a non-cellular carrier offers more on the group of MTA licenses in a sealed bid. Cellular carriers will be without effective recourse to avoid this result. They will not be able to influence the outcome because there are some individual MTA licenses for which they may not apply. Further, they will not be able to influence the outcome because some individual MTA licenses will be valued in oral auctions in which they are not eligible to participate.<sup>21</sup>

GTE believes that PCS consumers should not be denied the benefit of cellular carriers' experience and expertise in this manner.

While the problems described above represent only a sampling of the arguments against national combinatorial bidding, GTE believes they sufficiently testify to the fact that the Notice's proposed combinatorial bidding scheme should not be pursued. Indeed, the same reasons that warranted rejection of national PCS service areas also apply with equal force to the combinatorial bidding proposal. Consequently, if the Commission is to promote diverse PCS participation and facilitate the rapid deployment of service, proposals to allow back door national licensing through combinatorial bidding should be rejected.

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<sup>21</sup> Id. at 8. See also Southwestern Bell at 27.

**D. MCI's Proposal To Limit Cellular Participation In PCS Bidding  
Should Be Summarily Rejected**

In its comments in this proceeding, MCI argues that dominant cellular providers and their affiliates should be excluded from "bidding on one entire band of the 30 MHz MTA licenses, whether the particular MTAs in that band represent an in-region or out-of-region MTA to a particular dominant cellular provider."<sup>22</sup> GTE believes that MCI's proposal should be summarily dismissed because, in addition to being self-serving and unduly restrictive, it resurrects timeworn arguments that have already been fully addressed, considered, and rejected by the Commission.

As an initial matter, the Commission's PCS Report and Order expressly recognized that "participation by cellular operators in PCS offers the potential to promote the early development of PCS by taking advantage of cellular providers' expertise, economies of scope between cellular service, and existing infrastructures."<sup>23</sup> In light of their considerable managerial, technical and commercial capabilities, the Commission concluded that the public interest would be served by granting cellular carriers eligibility to obtain PCS licenses outside of their service areas.<sup>24</sup>

Significantly, the Commission noted that cellular participation in PCS "will foster a competitive market environment that will benefit consumers by lowering prices, improving service and increasing the availability of innovative products." There can be

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<sup>22</sup> MCI at 4.

<sup>23</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 93-451, ¶ 104 (Oct. 22, 1993) (Second Report and Order).

<sup>24</sup> Id.

no doubt then that the Commission has already fully considered and rejected MCI's request for a bar against cellular participation in PCS for sound public interest reasons. As such, MCI's arguments are not within the scope of this proceeding and would be more appropriately addressed on reconsideration of the PCS Order.<sup>25</sup>

**II. THE OPENING COMMENTS ILLUSTRATE THE IMPORTANCE OF ESTABLISHING CLEAR DEFINITIONS OF DESIGNATED ENTITIES AND THEIR BIDDING PREFERENCES**

In its comments, GTE recommended that the Commission adopt unambiguous definitions for designated entities. The opening comments illustrate the wisdom of this approach as the sheer number and variety of proffered definitions and bidding preferences indicate that virtually everybody with a colorable claim will be vying for a preference. Without clearly defined preference policies, the Commission will ultimately become embroiled in endless eligibility questions and problems of dealing with abuses.

**A. The Commission Is Confronted With A Host Of Requests To Expand The Definitions Of Designated Entities And The Scope Of Their Preferences**

Because there could be tremendous advantages to being classified as a designated entity, many commenters have proposed definitions that would broaden the list of preferred categories. For example, some commenters suggest an expansive definition of "minority" that would include such categories as people from the Indian

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<sup>25</sup> If anything, MCI's comments highlight the need for the Commission to recognize the vestigial effects of the wireline and non-wireline settlements on cellular ownership. In particular, the Commission may need to revisit its treatment of non-controlling limited partnership interests under the PCS attribution rules. Furthermore, the Commission should clarify that cellular carriers should be free to participate in PCS competitive bidding subject to divesting any impermissible cellular interests and that tax certificates will be issued for cellular carriers that divest such interests to effectuate compliance with Commission rules.



subcontinent,<sup>26</sup> and people with disabilities.<sup>27</sup> The record is also replete with comments addressing the definition of "small business." Various proposals include expanding the SBA's net worth standard to \$50 million,<sup>28</sup> adopting a standard of 1500 employees,<sup>29</sup> and introducing additional criteria such as annual sales of the company,<sup>30</sup> and considerations of the control structure of an entity.<sup>31</sup> Not surprisingly, numerous proposals for defining "rural telephone company" also exist, such as limiting the status to companies with revenues less than \$100,000,000,<sup>32</sup> companies serving fewer than 50,000 access lines,<sup>33</sup> and companies serving an exchange containing less than 10,000 inhabitants.<sup>34</sup>

The Commission is also besieged with requests for special forms of preferences for designated entities. For example, some commenters propose that spectrum blocks be set aside exclusively for a particular category of designated entities.<sup>35</sup> The actual preference proposals include a host of plans involving installment payments,<sup>36</sup> royalty

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<sup>26</sup> Devsha Corp. at 3.

<sup>27</sup> Economics & Technology, Inc. at 1-2.

<sup>28</sup> Tri-State Radio Co. at 8.

<sup>29</sup> Personal Communications Network Serv. of New York at 2.

<sup>30</sup> See Suite 12 at 8 (proposing that businesses with less than \$75 million in annual sales should be treated as small businesses).

<sup>31</sup> See Minority PCS Coalition at 3 (proposing that Commission examine both the voting control and beneficial ownership of an entity).

<sup>32</sup> PMN, Inc. at 7-8.

<sup>33</sup> See, e.g., Rural Cellular Assn at 12; Rural Cellular Corp. at 2; The Small Tel. Co. of Louisiana at 11.

<sup>34</sup> Telephone Electronics Corp. at 10; Telocator at 10.

<sup>35</sup> See, e.g., Lightcom Intl., Inc. at 2 (urging the FCC to set aside blocks specifically for minority and women owned businesses so that they would not have to compete with other small businesses); Unique Communications Concepts at 1-2 (suggesting reservation of a block exclusively for rural telcos).

<sup>36</sup> See, e.g., Mercury Communications, L.C. at 1.

payments,<sup>37</sup> tax incentives,<sup>38</sup> and relief from the upfront payment requirement.<sup>39</sup> Other commenters seek policies that encourage large companies to bid jointly with designated entities,<sup>40</sup> or grant credit to consortia for designated entity participation.<sup>41</sup>

As illustrated by the above, there is widespread desire among the commenters to be classified as a designated entity and, to receive a wide array of bidding advantages. The number and variety of proposals further indicates that the Commission will continue to be deluged by applicants claiming entitlement to preferences after final rules are adopted. Accordingly, the Commission must clearly define the precise form of any appropriate designated entity preferences to avoid embroiling itself in endless disputes and to deter potential abuses.

**B. The Enormous Opportunities For Abuses Warrant Important Commission Standards And Policies For Designated Entities**

The definitions of designated entities proposed by GTE should be adopted because they are clear, easy to administer, and will limit the potential for abuse. Consistent with Commission policy, GTE and other commenters support defining the term "minority" to include "those of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction."<sup>42</sup> The Commission should also adopt the Small Business Association's ("SBA") variable standard for determining

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<sup>37</sup> See, e.g., Valley Management, Inc. at 3.

<sup>38</sup> See, e.g., American Wireless Communication Corp. at 23.

<sup>39</sup> See, e.g., American Wireless Communication Corp. at 31; Luxcel Group, Inc. at 6.

<sup>40</sup> NABOB at 5-6.

<sup>41</sup> See, e.g., American Wireless Communication Corp. at 27-28. In addition, American Wireless and others urge the FCC to award a percentage credit to designated entities bidding against a non-designated entity.

<sup>42</sup> Notice at ¶77, n. 52. See also Cook Inlet Region at 19; Telmarc Group at 11.

whether an entity is a small business.<sup>43</sup> This standard is widely supported and well recognized in the business community.

"Rural telephone company" should be defined as those carriers providing telephone exchange service by wire: 1) in an area having no incorporated place of 10,000 or more inhabitants and no territory included within a Census Bureau defined "urbanized area"; 2) to less than 10,000 subscribers; or 3) whose income accrues to a state or political subdivision thereof.<sup>44</sup> Rural local exchange carriers have long demonstrated their expertise and dedication to serving rural America, despite the fact that these areas are inherently less economical and attractive to serve. By including these carriers in the definition of designated entities, the Commission will ensure better service to rural areas.<sup>45</sup> Moreover, eligibility should not be affected by the rural telco's relationship to a parent or holding company.

To safeguard against abuses, designated entities should be 50.1% owned by women or minorities.<sup>46</sup> This requirement will prevent parties with putative stock interests from establishing corporate fictions to disguise who holds actual control. The 50.1% standard will be easy to administer because the Commission will not have to make complex determinations of actual control. For similar reasons, preferences assigned for designated entity participation in bidding consortia should only be recognized where the designated entity holds a controlling 50.1% interest in the bidding consortium.

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<sup>43</sup> GTE at 14.

<sup>44</sup> Id. at 13.

<sup>45</sup> National Rural Telecom Ass'n at 3-4.

<sup>46</sup> See, e.g., Iowa Network Services, Inc. at 22; Pacific Telecom Cellular, Inc. at 4; Richard L. Vega at 7.

Finally, strict anti-trafficking rules, such as financial criteria, upfront deposits, and public disclosure of bidders' ownership information will enable the Commission to properly identify designated entities.<sup>47</sup> This will prevent abuses of bidding preferences by ensuring that only legitimate designated entities seek preferences. The Commission's adoption of GTE's recommendations will serve the public interest by deterring speculation and facilitating the rapid deployment of service.

**III. THERE IS BROAD BASED AGREEMENT AMONG COMMENTING PARTIES CONCERNING THE APPLICABILITY OF COMPETITIVE BIDDING TO VARIOUS SPECTRUM LICENSING CIRCUMSTANCES**

**A. Virtually All Parties Agree That Competitive Bidding Should Not Be Applied To Authorizations For Renewal Or Modification Of Licensed Services**

GTE and all other parties commenting on the subject agreed with the Commission's proposal to exclude renewal and modification applications from competitive bidding.<sup>48</sup> Clearly, Congress intended this result as the plain language of the statute limits the FCC's auction authority to mutually exclusive applications for initial licenses or construction permits.<sup>49</sup>

Many parties observe that the application of competitive bidding to renewal or modification licenses would disserve the public interest by disrupting established common carrier services. It would also undermine the goal of efficient and intensive use of the electromagnetic spectrum as incumbent licensees could not be assured that their investment in the development of the initial license would be rewarded by grant of

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<sup>47</sup> GTE at 15-16.

<sup>48</sup> See id. at 2; McCaw at 24; NYNEX at 8-9; Southwestern Bell at 4-5; TDS at 4; TRW at 22-23; and USTA at 2.

<sup>49</sup> See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002, 107 Stat. 312, 388 ("Budget Act").

a renewal.<sup>50</sup> For these reasons, the Commission "previously has recognized that the public interest is better served by encouraging incumbent licensees to continue to invest in the deployment of services."<sup>51</sup> Accordingly, the Notice's tentative proposal to exclude renewal or modification applications from competitive bidding should be adopted.

**B. Intermediate Links Should Be Removed From Competitive Bidding Procedures**

The comments provide overwhelming support for an intermediate link exclusion from competitive bidding.<sup>52</sup> There is virtually unanimous agreement that such point-to-point microwave links do not fall within the bounds of spectrum subject to auctions under the Budget Act, because these frequencies are not themselves offered to paying subscribers but rather are used in the internal operations of many service providers, including cellular and local exchange carriers.

Removal of intermediate links from competitive bidding would be fully consistent with Congressional intent. Indeed, Congressman Dingell has himself recognized,

Inasmuch as these links are incidental to the provision of a different, and not necessarily spectrum-based, service, subjecting these licenses to competitive bidding procedures would be inappropriate.<sup>53</sup>

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<sup>50</sup> Southwestern Bell at 4-5.

<sup>51</sup> Id.

<sup>52</sup> See Alcatel Network Systems at 2-3; APC at 8-9; Ameritech at 3; AT&T at 20-23; BellSouth at 45; California Microwave at 3-7; Comcast at 14-15; Cox at 8-9; McCaw at 25-29; MCI at 22; National Rural Telecom Ass'n at 13; OPASTCO at 11; Pacific Bell and Nevada Bell at 18-19; PacTel at 8-10; Point Communications at 5; Rochester Telephone at 2, 5-7; Rural Cellular Ass'n at 3-4; Small Tel. Co. of Louisiana at 3-4; Southwestern Bell at 6-11; Sprint at 22; TDS at 4; Telocator at 18; Time Warner at 6-9; USTA at 2; U.S. Intelco Networks at 5-7; UTC at 7-8; and Richard L. Vega Group at 3.

<sup>53</sup> Letter from John D. Dingell, Chairman, U.S. House of Representatives Committee on Energy and Commerce to the Honorable James H. Quello (Nov. 15, 1993).

Congressman Dingell further explained that for auctions to apply, the subject spectrum must enable subscribers to receive or transmit directly communications signals.

The term [directly] was incorporated into the legislation in order to distinguish between those who subscribe to spectrum-based services and others whose use of the spectrum is incidental to some other service. In my view, the term "directly" in this instance in essence requires that subscribers operate a transmitter themselves.<sup>54</sup>

Accordingly, the Notice's tentative proposal to auction intermediate links must be abandoned as inconsistent with the language and the purposes of the Budget Act.<sup>55</sup>

**C. Competitive Bidding Clearly Should Apply To Private Radio Services That Have Exclusive Spectrum And Provide For-Profit Services To Subscribers**

While GTE understands the Commission's confusion regarding the applicability of competitive bidding to intermediate links in the absence of Chairman Dingell's clarification, there can be no ambiguity concerning the applicability of competitive bidding to private radio licenses involving mutual exclusivity and for-profit service to subscribers. The statutory text specifically authorizes the Commission to employ auctions where mutually exclusive applications are filed for initial licenses or construction permits. Additionally, the service must be principally provided to subscribers for compensation. Accordingly, the comments of 800 MHz and 900 MHz SMR operators requesting an exemption<sup>56</sup> must be summarily rejected.<sup>57</sup>

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<sup>54</sup> Id.

<sup>55</sup> In addition, GTE and a substantial number of parties expressed concern that the initiation of competitive bidding to intermediate links could have the effect of generating a flood of speculative mutually exclusive applications whereas now such applications are rare for these licenses. Thus, competitive bidding in this instance would not accomplish the Commission's directive "to avoid mutual exclusivity in licensing and application proceedings." See Budget Act, 107 Stat. at 390.

<sup>56</sup> American Mobile Telecommunications Ass'n, Inc. at 8-15; Dennis Brown & Robert Schwaninger at 1-2; Comcast at 13; JMP Telecom Systems, Inc. at 7.

**D. Competitive Bidding Should Apply To Cellular Unserved Areas**

GTE supports the Commission's tentative proposal to auction mutually exclusive pending applications for unserved areas in the cellular service.<sup>58</sup> As the Commission and numerous commenters recognize, the auction process will speed deployment of service, particularly to rural areas, by discouraging the participation of speculators.<sup>59</sup>

GTE agrees that the pool of bidders should be limited to those applicants who filed prior to July 26, 1993. "These applicants have already expended the time and resources to apply to enter the process, and given the large number of applications on file, there is little to be gained in terms of either fairness or administrative efficiency by re-opening the applications process."<sup>60</sup>

**E. BETRS Licenses Used To Provide Local Exchange Telephone Service Should Not Be Subject To Competitive Bidding**

Numerous commenters in this proceeding oppose the proposal to award BETRS licenses through competitive bidding.<sup>61</sup> They maintain that BETRS frequencies are used by local exchange carriers ("LECs") to provide local subscriber loops when other technology proves less cost effective, generally in rural and remote areas. "In many cases, BETRS facilities connect customers in areas where it is physically impossible

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<sup>57</sup> GTE at 17; Industrial Telecommunications Ass'n at 4; McCaw at 29-30; NYNEX at 9-11; Southwestern Bell at 13-14.

<sup>58</sup> Notice ¶ 160.

<sup>59</sup> Id. See also Bell Atlantic at 22-23; BellSouth at 45; CTIA at 31; First Cellular at 2; McCaw at 30-31.

<sup>60</sup> Bell Atlantic at 22.

<sup>61</sup> Notice at ¶¶ 165-66. See also Citizens Utilities Company at 7-11; Interdigital Communications Corporation at 2-6; National Rural TeleCom Ass'n at 13; National Telephone Cooperative Ass'n at 15-18; OPASTCO at 11; Pacific Bell and Nevada Bell at 19; and USTA at 4-5.

and prohibitively expensive to string wire or cable.”<sup>62</sup> As such, they play an indispensable role in assuring the ubiquitous availability of telephone service.

GTE agrees that it “would be ironic and more significantly, contrary to the Universal Service goals of Section 1 of the Act, if the Commission were to . . . put BETRS spectrum on the block.”<sup>63</sup> Commenters point out that BETRS generally does not involve mutually exclusive applications as only a state-certified LEC is eligible to apply for a BETRS license to extend service to new customers in remote areas.<sup>64</sup> Nonetheless, any exemption from auctions should be limited to those situations where BETRS is used only for local exchange telephone services and not as a ruse to enter the mobile marketplace.

**F. GTE Spacenet Endorses The Comments Of Hughes Communications Galaxy, Inc. With Respect To Maintaining Current Fixed-Satellite Service Licensing Procedures**

In its comments in this proceeding, Hughes Communications Galaxy, Inc. (“HCG”) urged the Commission not to apply its competitive bidding authority to the fixed-satellite service (“FSS”). HCG provided an extensive showing to justify its recommended continuance of the Commission’s present group processing and licensing procedures for the FSS industry. As HCG notes, the current FCC group processing policies and procedures for the FSS “have proved to be extremely

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<sup>62</sup> Citizens Utilities Company at 8.

<sup>63</sup> National Telephone Cooperative Ass’n at 17.

<sup>64</sup> Citizens Utilities Company at 8. While there may be an occasional mutually exclusive application due to the fact that the spectrum allocated to BETRS is shared with paging services, the Commission has determined not to use competitive bidding in other instances where spectrum is allocated to more than one service category on a shared basis. Notice at ¶¶ 139-40.



successful in efficiently allocating the orbit-spectrum resource and rapidly deploying satellite systems to the public."<sup>65</sup>

GTE Spacenet wholeheartedly supports the comments filed by HCG, and strongly recommends that the current FCC licensing procedures for the FSS industry be maintained. These procedures have served the industry and the public interest well over the past few decades, and there is no cause to believe that the procedures will lose their effectiveness in the future. GTE Spacenet therefore strongly urges the Commission to maintain the status quo for the licensing of FSS satellites.

#### **IV. CONCLUSION**

The Commission's competitive bidding rules will shape the future of wireless services. As detailed above, auction procedures that maximize informed participation by qualified bidders will best serve the public interest. Consistent with that overarching principle, GTE recommends the iterative auctioning of all similarly filed spectrum blocks (electronically or otherwise) to allow bidders more perfect information concerning spectrum values and value interdependencies.

The record before the Commission also illustrates the need for great care in developing designated entity rules as well as the importance of unequivocally excluding renewal, modification, intermediate link, BETRS, and FSS authorizations from competitive bidding. In contrast, initial authorizations sought to provide for-profit service to SMR and unserved cellular service areas clearly fall within the scope of the

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<sup>65</sup> See Hughes Communications Galaxy, Inc. and Directv, Inc. at 6.